

# SENATE BILL No. 11

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 12-7-2; IC 12-11-14.

**Synopsis:** ABLE savings accounts for persons with a disability. Creates the "achieving a better life experience" (ABLE) authority (authority). Establishes the ABLE board (board) of the authority. Requires the authority to establish a qualified ABLE program under which a person may make contributions for a taxable year for the benefit of an eligible individual with a disability to an ABLE account to meet the qualified disability expenses of the designated beneficiary in compliance with federal law. Sets forth duties and powers of the authority and the board. Establishes a general operating fund, endowment fund, and trust fund.

**Effective:** July 1, 2016.

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January 5, 2016, read first time and referred to Committee on Tax & Fiscal Policy.

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Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## SENATE BILL No. 11

A BILL FOR AN ACT to amend the Indiana Code concerning human services.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 12-7-2-0.5 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2016]: **Sec. 0.5. "ABLE account", for purposes of IC 12-11-14,**
- 4 **has the meaning set forth in IC 12-11-14-1.**
- 5 SECTION 2. IC 12-7-2-18.5 IS ADDED TO THE INDIANA CODE
- 6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 7 1, 2016]: **Sec. 18.5. "Authority", for purposes of IC 12-11-14, has**
- 8 **the meaning set forth in IC 12-11-14-2.**
- 9 SECTION 3. IC 12-7-2-22, AS AMENDED BY P.L.145-2014,
- 10 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 11 JULY 1, 2016]: Sec. 22. "Board" means the following:
- 12 (1) For purposes of IC 12-10-10, IC 12-10-10.5, and IC 12-10-11,
- 13 the community and home options to institutional care for the
- 14 elderly and disabled board established by IC 12-10-11-1.
- 15 (2) **For purposes of IC 12-11-14, the meaning set forth in**
- 16 **IC 12-11-14-3.**
- 17 (2) (3) For purposes of IC 12-12-7-5, the meaning set forth in



1 IC 12-12-7-5(a).

2 ~~(3)~~ **(4)** For purposes of IC 12-15-35, the meaning set forth in  
3 IC 12-15-35-2.

4 SECTION 4. IC 12-7-2-58.5 IS ADDED TO THE INDIANA CODE  
5 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
6 1, 2016]: **Sec. 58.5. "Designated beneficiary", for purposes of**  
7 **IC 12-11-14, has the meaning set forth in IC 12-11-14-4.**

8 SECTION 5. IC 12-7-2-76, AS AMENDED BY P.L.145-2014,  
9 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
10 JULY 1, 2016]: Sec. 76. (a) "Eligible individual", for purposes of:

11 (1) IC 12-10-10, has the meaning set forth in IC 12-10-10-4; ~~and~~

12 (2) IC 12-10-10.5, has the meaning set forth in IC 12-10-10.5-3;  
13 **and**

14 **(3) IC 12-11-14, has the meaning set forth in IC 12-11-14-5.**

15 (b) "Eligible individual" has the meaning set forth in  
16 IC 12-14-18-1.5 for purposes of the following:

17 (1) IC 12-10-6.

18 (2) IC 12-14-2.

19 (3) IC 12-14-18.

20 (4) IC 12-14-19.

21 (5) IC 12-15-2.

22 (6) IC 12-15-3.

23 (7) IC 12-16-3.5.

24 (8) IC 12-20-5.5.

25 SECTION 6. IC 12-7-2-154.4 IS ADDED TO THE INDIANA  
26 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
27 [EFFECTIVE JULY 1, 2016]: **Sec. 154.4. "Qualified ABLE**  
28 **program", for purposes of IC 12-11-14, has the meaning set forth**  
29 **in IC 12-11-14-6.**

30 SECTION 7. IC 12-7-2-154.6 IS ADDED TO THE INDIANA  
31 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
32 [EFFECTIVE JULY 1, 2016]: **Sec. 154.6. "Qualified disability**  
33 **expense", for purposes of IC 12-11-14, has the meaning set forth in**  
34 **IC 12-11-14-7.**

35 SECTION 8. IC 12-11-14 IS ADDED TO THE INDIANA CODE  
36 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
37 JULY 1, 2016]:

38 **Chapter 14. Achieving a Better Life Experience (ABLE)**  
39 **Program**

40 **Sec. 1. As used in this chapter, "ABLE account" refers to an**  
41 **achieving a better life experience (ABLE) account established by**  
42 **an eligible individual that:**



- (1) is maintained under a qualified ABLE program; and
- (2) meets the requirements of Section 529A of the Internal Revenue Code.

Sec. 2. As used in this chapter, "authority" refers to the achieving a better life experience (ABLE) authority created by section 8 of this chapter.

Sec. 3. As used in this chapter, "board" refers to the ABLE board of the authority established by section 9 of this chapter.

Sec. 4. As used in this chapter, "designated beneficiary" means the eligible individual who has established an ABLE account and is the owner of the account.

Sec. 5. As used in this chapter, "eligible individual" means an individual who during a taxable year:

- (1) is entitled to benefits based on blindness or disability under Title II or Title XVI of the federal Social Security Act and the blindness or disability occurred before the individual became twenty-six (26) years of age; or
- (2) has a disability certification that has been filed as set forth in Section 529A of the Internal Revenue Code.

Sec. 6. As used in this chapter, "qualified ABLE program" refers to the achieving a better life experience (ABLE) program established under this chapter under which a person may make contributions for a taxable year for the benefit of an eligible individual to an ABLE account to meet the qualified disability expenses of the designated beneficiary in compliance with Section 529A of the Internal Revenue Code.

Sec. 7. As used in this chapter, "qualified disability expense" means any expenses related to the eligible individual's blindness or disability that are incurred for the benefit of an eligible individual who is the designated beneficiary, including the following expenses:

- (1) Education.
- (2) Housing.
- (3) Transportation.
- (4) Employment training and support.
- (5) Assistive technology and personal support services.
- (6) Health.
- (7) Prevention and wellness.
- (8) Management and administration.
- (9) Legal fees.
- (10) Oversight and monitoring.
- (11) Funeral and burial.
- (12) Other expenses approved by the federal government for



1 a qualified ABLE program.

2 Sec. 8. (a) The achieving a better life experience (ABLE)  
3 authority is created. The authority is a body corporate and politic.

4 (b) The authority:

5 (1) is not an agency of the state; and

6 (2) is an instrumentality of the state performing essential  
7 governmental functions.

8 (c) The authority shall establish a qualified ABLE program.

9 (d) Because the management and operation of a qualified ABLE  
10 program and all funds and ABLE accounts established under this  
11 chapter constitute the performance of an essential public function,  
12 the following are exempt from taxation by the state and by any  
13 political subdivision of the state:

14 (1) The authority's management and operations.

15 (2) The authority's property and assets.

16 (3) All property and assets held by or for the authority except  
17 individual ABLE accounts.

18 (4) The investment income and earnings (whether interest,  
19 gains, or dividends) on:

20 (A) the authority's property and assets; and

21 (B) all property and assets held by or for the authority;  
22 including all funds and accounts established under this article  
23 except individual ABLE accounts.

24 (e) The authority may contract with public or private entities or  
25 persons for the provision of all or any portion of the services the  
26 board considers necessary for the management and operation of  
27 the authority, including the qualified ABLE program and all funds  
28 and accounts of the authority.

29 (f) The authority is a public agency for purposes of IC 5-14-1.5  
30 and IC 5-14-3. The board is a governing body for purposes of  
31 IC 5-14-1.5.

32 Sec. 9. (a) The ABLE board of the authority is established. The  
33 board consists of the following:

34 (1) The following three (3) ex officio members:

35 (A) The treasurer of state.

36 (B) The secretary of family and social services.

37 (C) The budget director.

38 (2) Five (5) appointed members who:

39 (A) are appointed by the governor; and

40 (B) have knowledge, skill, and experience in academic,  
41 business, financial, disability, or health fields.

42 (b) During an appointed member's term of service on the board,



1 the appointed member of the board may not be an official or  
2 employee of the state.

3 (c) Not more than three (3) of the appointed members of the  
4 board may belong to the same political party.

5 (d) An appointed member serves a four (4) year term. An  
6 appointed member shall hold over after the expiration of the  
7 member's term until the member's successor is appointed and  
8 qualified.

9 (e) The governor may reappoint an appointed member of the  
10 board.

11 (f) A vacancy shall be filled for the balance of an unexpired term  
12 in the same manner as the original appointment.

13 (g) The treasurer of state shall serve as chairperson of the  
14 board. The board shall annually elect one (1) of its ex officio  
15 members as vice chairperson, and may elect any other officer the  
16 board desires. The board shall meet at the call of the chairperson  
17 and as provided in the bylaws of the authority. Meetings of the  
18 board may be held anywhere in Indiana.

19 (h) The governor may remove an appointed member for  
20 misfeasance, malfeasance, willful neglect of duty, or other cause  
21 after notice and a public hearing, unless the member expressly  
22 waives the notice and hearing in writing.

23 (i) An appointed member of the board is not entitled to the  
24 minimum salary per diem provided by IC 4-10-11-2.1(b). However,  
25 each appointed member is entitled to reimbursement for traveling  
26 expenses and other expenses actually incurred in connection with  
27 the member's duties.

28 (j) An ex officio member of the board is entitled to  
29 reimbursement for traveling expenses and other expenses actually  
30 incurred in connection with the member's duties.

31 (k) An ex officio member of the board may designate a person  
32 to serve as an ex officio member of the board in the absence of the  
33 ex officio member.

34 (l) Five (5) members of the board are a quorum for:

- 35 (1) the transaction of business at a meeting of the board; or
- 36 (2) the exercise of a power or function of the authority.

37 (m) The affirmative vote of a majority of all the members of the  
38 board who are present is necessary for the authority to take action.  
39 A vacancy in the membership of the board does not impair the  
40 right of a quorum to exercise all the rights and perform all the  
41 duties of the authority. An action taken by the board under this  
42 article may be authorized by:



- (1) resolution at any regular or special meeting; or
- (2) unanimous consent of all the members who have not abstained.

A resolution takes effect immediately upon adoption and need not be published or posted.

Sec. 10. (a) The board may:

- (1) employ a manager, who is not a member of the board; and
- (2) delegate necessary and appropriate functions and authority to the manager.

(b) The board has the powers necessary and appropriate to carry out and effectuate the purposes of this chapter, including the following:

(1) To develop and implement a qualified ABLE program for Indiana through:

- (A) rules adopted under IC 4-22-2 or emergency rules adopted in the manner provided under IC 4-22-2-37.1; or
- (B) rules, guidelines, procedures, or policies established by the board.

(2) To conform the qualified ABLE program to meet the requirements of Section 529A of the Internal Revenue Code and all applicable federal laws and regulations.

(3) To retain professional services, including the following:

- (A) Advisers and managers.
- (B) Custodians and other fiduciaries.
- (C) Investment advisers and managers.
- (D) Accountants and auditors.
- (E) Consultants or other experts.
- (F) Actuarial services providers.
- (G) Attorneys.

(4) To establish minimum ABLE account deposit amounts (both initial and periodic).

(5) To employ persons, if the board chooses, and as may be necessary, and to fix the terms of employment.

(6) To recommend legislation to the governor and the general assembly.

(7) To apply for designation as a tax exempt entity under the Internal Revenue Code.

(8) To sue and be sued.

(9) To provide or facilitate provision of benefits and incentives for the benefit of qualified beneficiaries.

(10) To conform the qualified ABLE program to federal tax advantages or incentives, to the extent consistent with the



purposes and objectives of this chapter.

(11) To charge, impose, and collect administrative fees and service charges in connection with any agreement, contract, or transaction under a qualified ABLE program.

(12) To have perpetual succession.

(13) To establish policies and procedures to govern distributions from ABLE accounts that are not:

(A) made on account of the death or disability of an account beneficiary; or

(B) rollovers.

(14) To establish penalties for withdrawals of money from ABLE accounts that are not used exclusively for a qualified disability expense of an account beneficiary unless a circumstance described in subdivision (13) applies.

(15) To establish policies and procedures regarding the transfer of individual ABLE accounts and the designation of substitute account beneficiaries.

(16) To establish policies and procedures for withdrawal of money from ABLE accounts for, or in reimbursement of, a qualified disability expense.

(17) To enter into agreements with ABLE account owners, account beneficiaries, and contributors, with the agreements naming:

(A) the account owner; and

(B) the account beneficiary.

(18) To establish ABLE accounts for account beneficiaries. However:

(A) the authority shall establish a separate ABLE account for each account beneficiary; and

(B) an individual may be the beneficiary of more than one (1) ABLE account.

(19) To enter into agreements with financial institutions relating to ABLE accounts as well as deposits, withdrawals, penalties, allocation of benefits or incentives, and transfers of accounts, account owners, and account beneficiaries.

**Sec. 11. (a) The authority shall do the following:**

(1) Provide the board and each member, officer, employee, consultant, counsel, and agent of the authority or the board a defense in a suit arising out of the performance of duties for or on behalf of the authority or the board, if the board determines that the duties were provided in good faith.

(2) Hold a person described in subdivision (1) or the board





harmless from any liability, cost, or damage in connection with an action arising out of the performance of duties for or on behalf of the authority or the board, including the payment of any legal fees, except where the liability, cost, or damage is predicated on, or arises out of, bad faith of the person or the board, or is based on the person's or board's malfeasance in the performance of duties.

(b) The authority shall prepare an annual report for the qualified ABLE program and transmit the annual report to the governor and, in an electronic format under IC 5-14-6, to the general assembly. The authority shall make available upon request a copy of the annual report to qualified beneficiaries, account owners, and the public.

**Sec. 12. (a)** The authority may accept gifts, bequests, donations, and devises of personal and real property:

(1) as trustees for the maintenance, use, or benefit of the authority, the qualified ABLE program, or the endowment fund; or

(2) to be administered for other public or charitable purposes for the use or benefit of ABLE account owners or ABLE account beneficiaries.

(b) The authority may receive, accept, hold, administer, and use any property transferred to the authority by gift, bequest, donation, or devise in accordance with the terms, conditions, obligations, liabilities, and burdens imposed on the gift, bequest, donation, or devise if, in the judgment of the board, the action is in the best interest of the authority, the qualified ABLE program, the endowment fund, ABLE account owners, ABLE account contributors, or ABLE account beneficiaries, as applicable.

(c) The authority may, if not inconsistent with the terms and conditions of a gift of real property:

(1) sell, convey, or otherwise dispose of the real property; and

(2) invest, reinvest, or use the proceeds as, in the judgment of the board, is of the greatest benefit to the authority, the qualified ABLE program, the endowment fund, ABLE account beneficiaries, and ABLE account owners.

**Sec. 13.** A person designated by resolution of the authority:

(1) shall keep a record of the proceedings of the authority;

(2) shall be custodian of:

(A) all books, documents, and papers filed with the authority; and

(B) the minutes book or journal of the authority; and



(3) may copy all minutes and other records and documents of the authority and may certify that the copies are true copies. A person who deals with the authority may rely upon the certification.

**Sec. 14. Before the adoption and implementation of a qualified ABLE program:**

- (1) the chairperson;
- (2) the vice chairperson;
- (3) the manager; and
- (4) any officer elected by the authority or member of the authority authorized by resolution to handle funds or sign checks;

shall execute a surety bond in the penal sum of one hundred thousand dollars (\$100,000). The surety bond shall be conditioned upon the faithful performance of the duties of the office of the principal and shall be executed by a surety company authorized to transact business in Indiana. The authority shall pay the cost of the bonds.

**Sec. 15. Notwithstanding any other law, it is not a conflict of interest or violation of any other law for a person to serve as a member of the authority. However, a member shall disclose a conflict of interest relating to actions of the authority as required and in a manner provided by IC 35-44.1-1-4.**

**Sec. 16. The following are established:**

- (1) The general operating fund.
- (2) The endowment fund.
- (3) The trust fund and, in the trust fund, the following:
  - (A) The administrative account.
  - (B) The program account.

**Sec. 17. The authority shall establish and implement investment policies in accordance with IC 5-13 for the following:**

- (1) Money in the general operating fund.
- (2) Money in the administrative account.
- (3) Any other money of the authority other than money in:
  - (A) the endowment fund; and
  - (B) the program account.

**Sec. 18. The board shall establish and implement investment policies for money in:**

- (1) the endowment fund; and
- (2) the program account;

**for investment in the manner provided by IC 30-4-3-3.**

**Sec. 19. The trust fund and other property of the authority must**



1 be preserved, invested, and expended only under this article and  
 2 may not be used for any other purpose. The trust fund shall be held  
 3 in trust for account owners and account beneficiaries.

4 Sec. 20. Criteria for management of assets in the trust fund,  
 5 including investment of assets, must provide for both asset  
 6 protection and income growth while providing for the actuarial  
 7 soundness of the trust fund.

8 Sec. 21. (a) General operating, administrative, and capital  
 9 expenses of the authority may be paid from amounts appropriated  
 10 for those purposes by the general assembly. Appropriations must  
 11 be deposited in either the administrative account or the general  
 12 operating fund, as the board determines to be appropriate.

13 (b) Money in the administrative account shall be used first to  
 14 pay the general operating, administrative, and capital expenses of  
 15 the authority. Before money in the program account may be used  
 16 for these expenses, the authority must exhaust all other funds  
 17 available to the authority, including money in the endowment fund  
 18 and the administrative account.

19 Sec. 22. (a) The funds, accounts, management, and operations  
 20 of the authority are subject to annual audit by an independent  
 21 public accounting firm retained by the board.

22 (b) The authority shall promptly transmit copies of each annual  
 23 audit to the governor and in an electronic format under IC 5-14-6  
 24 to the general assembly. Upon request, the authority shall make  
 25 available copies of the audit to qualified beneficiaries, account  
 26 owners, and the public.

27 Sec. 23. (a) All ABLE accounts and all earnings or interest on  
 28 ABLE accounts are exempt from taxation in Indiana to the extent  
 29 that those accounts, earnings, and interest are exempt from federal  
 30 taxation under the Internal Revenue Code, subject to any penalties  
 31 that are established for a qualified ABLE program under this  
 32 chapter.

33 (b) Money deposited in an ABLE account by the account owner  
 34 or a contributor and investment returns on an account are the  
 35 property of the account owner.

36 (c) Funds held in an ABLE account that may be established  
 37 under this chapter may not be used by an account owner or  
 38 account beneficiary as security for a loan.

